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October 14, 2019

Via FOIA Online

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

RE: Freedom of Information Act Request for Records Related to Agency Exemption 6 Analysis

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. Section 552, as implemented by the Environmental Protection Agency (“EPA”) at 40 C.F.R. Part 2. For purposes of this request, the definition of “records” includes, but is not limited to, documents, letters, memoranda, notes, reports, e-mail messages (including e-mails to and from personal e-mail accounts), minutes, handouts, policy statements, data, technical evaluations or analysis, and studies.

Background

On July 9, 2019, Kevin Miller from EPA’s Office of General Counsel stated that all of “the email addresses” redacted in response to FOIA EPA-HQ-2018-009605 “are properly withheld under Exemption 6.” *See* attachment at 2.

Request

This request seeks any records supporting EPA’s Exemption 6 determination with regards to the email addresses redacted in FOIA request EPA-HQ-2018-009605. Please do not include any communications between EPA and the FOIA requester regarding this request. This request includes but is not limited to:

1. Any information supporting the conclusion that the withheld information falls within the scope of personnel and medical and similar files because the information applies to and is identified with an individual user,

2. Any information supporting the conclusion that the individual owners of the listed email addresses have a significant privacy interest, that they provided the email addresses to receive emails *only* from EPA, and/or that release would cause unsolicited harassment or spam, and
3. Any information supporting the conclusion that there is no cognizable public interest in releasing the email addresses.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed \$50.00. Please duplicate the records that are responsive to this request and send it to the undersigned at the above address. If the requested record is withheld based upon any asserted privilege, please identify the basis for the non-disclosure.

If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that only the necessary document is duplicated.

Respectfully,

/s/ Erin Thomas

Erin Thomas
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Washington, DC 20006
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Attachment – July 9, 2019 FOIA Response



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF
GENERAL COUNSEL

July 9, 2019

Ms. Erin Thomas
Hall & Associates
1620 I Street, NW, Suite 701
Washington, DC 20006

Re: Freedom of Information Act Appeal No. EPA-HQ-2019-006290 (Request No. EPA-HQ-2018-009605)

Dear Ms. Thomas:

I am responding to your June 5, 2019 Freedom of Information Act ("FOIA") appeal.¹ You appealed the April 15, 2019 final response to your request issued by David Travers, Director of the Water Security Division of the U.S. Environmental Protection Agency ("EPA" or "Agency"). Your July 13, 2018, request sought a "copy of the email distribution list of those in receipt of the July 13, 2018 EPA 'prepare for Harmful Algal Blooms' email."

By letter dated July 30, 2018, Stephanie Flaharty, FOIA Public Liaison, Office of Water, explained that the email distribution list consisted of over 19,000 email addresses. The July 30, 2018, letter requested that you choose between two methods of processing your FOIA request and indicated that private email addresses would be withheld pursuant to Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6). EPA did not hear from you, and on August 13, 2018, Ms. Flaharty closed your FOIA request. On September 13, 2018, you appealed the closure of your request as well as the purported redaction of non-agency email addresses pursuant to Exemption 6. On November 6, 2018, in the interest of administrative efficiency, I remanded your request to the Office of Water to be reopened; however, the Exemption 6 challenge was not ripe for determination because the program had not made an initial determination to withhold any information.

By letter dated November 19, 2018, Ms. Flaharty requested that you provide an assurance of payment of \$300 before EPA could continue processing your request. Ms. Flaharty anticipated that completion of the request would involve review of the email distribution list for any domains that are traditionally used to host personal email addresses, and the redaction of those private email addresses pursuant to Exemption 6. You refused to provide an assurance of payment beyond the \$100 previously

¹ You filed a complaint on April 18, 2019 concerning EPA's response to Request No. EPA-HQ-2018-009605. This appeal determination does not waive EPA's defense in that litigation that you failed to exhaust your administrative remedies as to EPA-HQ-2018-009605.

provided. On April 15, 2019, EPA provided you with the names of all individuals on the distribution list, but block redacted all email addresses on the distribution list.

You now appeal EPA's processing of the FOIA request, specifically challenging: (1) "EPA's assertion that it would redact all private email addresses," (2) the \$98 fee assessment, and (3) "EPA's redaction of every email address on the distribution list." Appeal at 3. I have carefully considered your request, EPA's decision, and your appeal. For the reasons set forth below, I have determined that your appeal should be, and is denied.

Exemption 6

The gravamen of your appeal is that you challenge the redaction of "every single email address with no cited FOIA exemption." Appeal at 4. You argue that EPA did not conduct an Exemption 6 analysis. However, EPA initially redacted all email addresses given your refusal to provide an assurance of payment for a full Exemption 6 analysis of the emails. After review of your appeal and the redacted record, I conclude that the email addresses are properly withheld under Exemption 6.

Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6), protects "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The withheld portion is within the scope of the phrase "personnel and medical files and similar files" because it contains information that applies to particular individuals.

In balancing the public interest against the individual's right to privacy, a comparison must be made between the privacy interest and the extent to which the document sheds light on EPA's performance of its statutory duties. The approximately 19,000 third party individuals have a privacy interest in their respective email addresses on the email list. The list of third-party email addresses does not shed light on EPA's performance of statutory duties. Therefore, the harm to the individuals as a result of disclosure clearly outweighs the lack of public interest. Disclosure of the withheld material would constitute a clearly unwarranted invasion of personal privacy; thus, the third party email addresses should remain redacted pursuant to Exemption 6.

Fee Assessment

You also challenge the \$98 fee assessment. Appeal at 5. EPA charges commercial requesters for the costs for searching, reviewing, and producing records. EPA searched for the email distribution list, downloaded the list into a producible format, reviewed the list, and redacted the final list of approximately 19,000 email addresses. While these tasks took approximately nine hours to complete, EPA charged for only 3.5 hours of work at \$28 per hour, totaling \$98. You provided a fee assurance of up to \$100. I have confirmed that the Office of Water's fee assessment was proper. Therefore, your challenge to the fees is denied.

This letter constitutes EPA's final determination on this matter. Pursuant to 5 U.S.C. § 552(a)(4)(B), you may obtain judicial review of this determination by filing a complaint in the United States District Court for the district in which you reside or have your principal place of business, or the district in which the records are situated, or in the District of Columbia. Additionally, as part of the 2007 FOIA amendments, the Office of Government Information Services ("OGIS") within the National Archives and Records Administration was created to offer mediation services to resolve disputes

between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD, 20740-6001; e-mail, ogis@nara.gov; telephone, 202-741-5770 or 1-877-684-6448; and fax, 202-741-5769.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin M. Miller', with a long, sweeping horizontal line extending to the right.

for Kevin M. Miller
Assistant General Counsel
General Law Office

cc: David Travers, Director, Water Security Division